IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1945

No. 1154

BASIL R. CRAMPTON,
Petitioner,

vs.

CRAMPTON MANUFACTURING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT WITH SUPPORTING BRIEF

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AMERICAN BRIEF AND RECORD CO., GRAND RAPIDS, MICHIGAN

SUBJECT INDEX

TABLE OF CASES CITED

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Basil R. Crampton, respectfully prays that a Writ of Certiorari be issued to review a decision of the Circuit Court of Appeals for the Sixth Circuit, entered January 28, 1946.

A Transcript of the Record, including the proceedings in said Circuit Court of Appeals is furnished herewith, in accordance with Rule 38 of the Rules of this Court.

OPINIONS BELOW

The opinion of the District Court is reported in 62 U. S. P. Q., 270 (Western District Michigan, Southern Di-

vision, 1944) and is in the Transcript at pages 19, 20. There is no Fed. Supp. report.

The opinion of the Circuit Court of Appeals for the Sixth Circuit is not yet reported in the Fed. Rep., but is reported in 68 U. S. P. Q. 122, and is in the Transcript at pages 184-192.

JURISDICTION

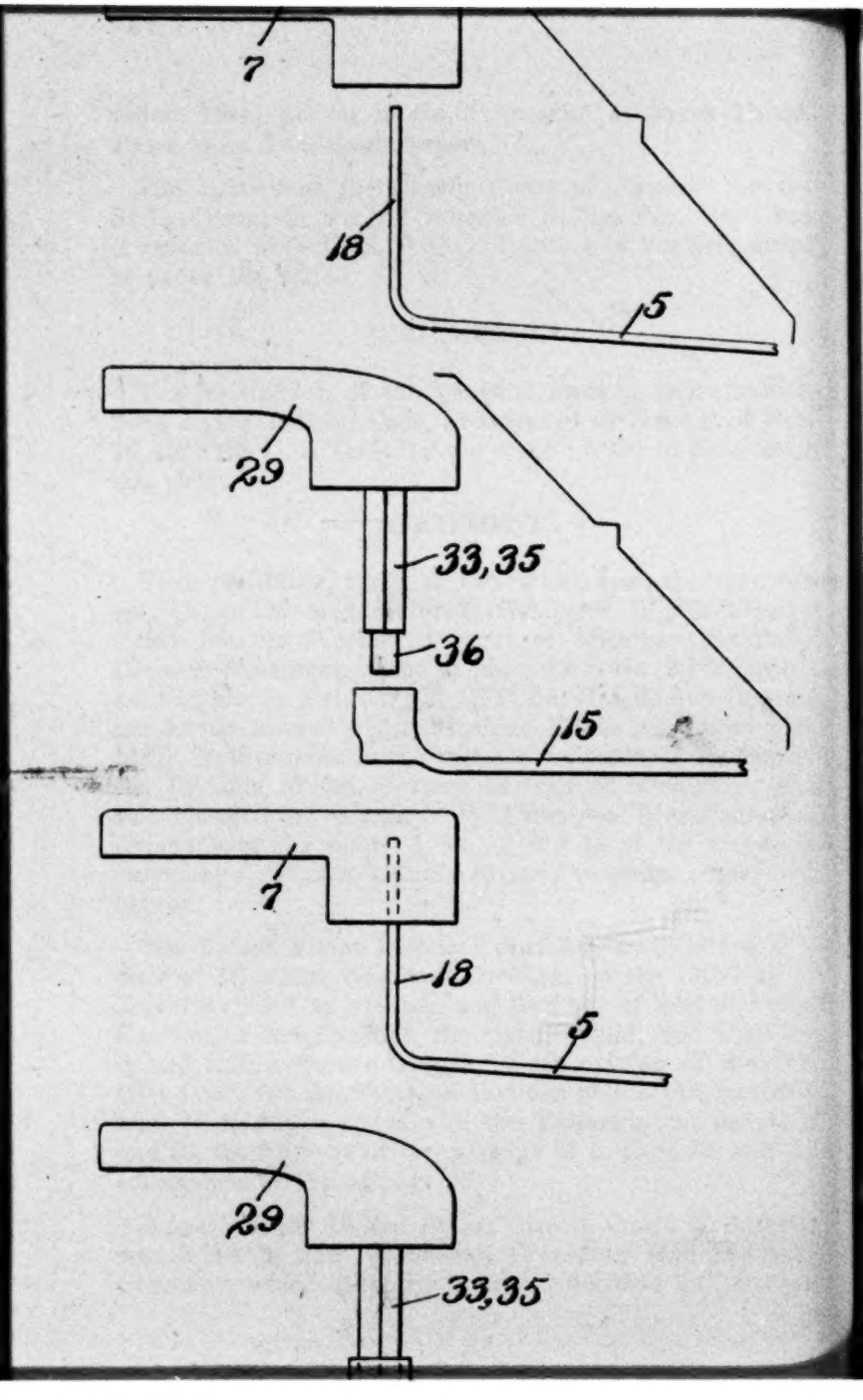
The jurisdiction of this court is invoked under section 240-a of the Judicial Code, as amended by the Act of Feb. 13, 1925 (28 U. S. C. 347); and section 5 (b) of Rule 38 of this court.

STATEMENT

Your petitioner, Basil R. Crampton, sued the respondent, Crampton Manufacturing Company, in the District Court for the Western District of Michigan, Southern Division for infringement of his patent, No. 2,233,159, issued to him on February 25, 1941 for Handle and Operating Lever Assembly for Flushing Tanks (Transcript p. 148). Both parties to the suit are residents of the Southern Division of the Western District of Michigan. The suit charged infringement by Crampton Manufacturing Company of the claims 2, 11, 12 and 13 of the aforesaid patent by Crampton Manufacturing Company, respondent herein.

The United States District Court for the Western District of Michigan, Southern Division, on the 13th day of July 1944 filed an opinion, and findings of fact and conclusions of law, holding the patent valid, and that the named claims were infringed. Such opinion of the District Court for the Southern Division of the Western District of Michigan appears in the Transcript at pages 19 and 20, the findings of fact at page 21 to page 26, and the conclusions of law at page 26.

Appeal to the United States Circuit Court of Appeals was taken by the respondent, Crampton Manufacturing Company, which court rendered its decision and entered


7
18
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36
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its judgment on the 28th day of January, 1946, (Trans. 183) holding claim 2 invalid, and holding claims 11, 12 and 13 valid, but not infringed. Rehearing denied March 11, 1946.

The opinion of the Sixth Circuit Court of Appeals in this case is at page 184 of the Transcript.

A disclaimer of claim 2 of said letters patent No. 2,233,159 has been executed by the sole owner of the patent, Basil R. Crampton, the petitioner herein, and has been forwarded to the Commissioner of Patents at Washington, D. C. for filing.

This petition is with the respect to claims 11, 12 and 13, which have been held valid by both the District and the Appellate Courts, and held infringed by the District Court and not infringed by the Appellate Court.

The issue, and the one only in this case, with respect to infringement of claims 10, 11 and 12 of the aforesaid patent, which fact of infringement was found by the District Court and reversed by the Appellate Court, lies in the differing points of permanent connection of the two initially fabricated parts of the manually operable lever member of the Handle and Operating Lever Assembly: One as disclosed in the Crampton patent 2,233,159, which is in the Transcript at page 148, and the lever member manufactured by the respondent, which is made in accordance with the disclosure in a subsequent patent, 2,213,840, granted March 16, 1943, upon the application of Pleasant et al, assigned to the respondent. A copy of such later patent is in the Transcript at page 160-e.

The accompanying drawing shows in its upper bracketed two figures the handle of the patent in suit, numbered 7, and the lever, numbered 5, with its lateral extension at one end, numbered 18, separate as they are initially fabricated. Immediately below, similarly bracketed, is the handle member 29 of the patent to Pleasant et al, a spindle laterally positioned at one end and integral therewith, numbered 33, 35, the spindle having a tip of reduced dimensions, 36, at its free end. Bracketed with it is the inside lever member numbered 15.

The two parts, the handle 7 in Crampton and the lever arm 5 and its integral lateral extension 18, in the completed flush tank lever are *permanently* and *inseparably* connected together, by the free end of the lateral extension 18 entering a socket in the handle and a rigid permanent connection made, one that is integral in effect and which can not be broken without overcoming the molecular cohesive force of the metal. The two parts in the infringing lever are *permanently* and *inseparably* connected together by passing the tip 36 of spindle 33, 35 of the patent to Pleasant, et al (transcript 160-e) through a hole at the bottom of a socket, numbered 28, at the end of the inside lever arm 15, and riveting or heading over the outer end of the tip 36; also one integral in effect, and which can not be broken without disrupting metal by pulling it apart and overcoming its molecular cohesion.

In the two figures at the lower part of the drawing, the upper figure thereof shows the two parts of the Crampton disclosure (transcript 148) in their permanent, inseparable connection. Below it, the last figure on the drawing, the two initially separately fabricated parts of the respondent's lever are shown permanently and inseparably connected together. They are the same, as thus permanently connected.

This movable lever member and handle assembly, which is operated by pushing down on the handle at the outside of the tank, in each has a tank wall fixture to which many names are given in the patents and by the trade. Generally, in the trade, it is known as a "spud" and the decision of the 6th C.C.A. calls it that. This spud or fixture which passes through an opening in the tank wall is mounted between the handle and the inside lever arm, which in the trade is known as the "lift arm".

To mount the spud the movable handle and lever element in each is initially made of two separated parts. Such spud is slipped over the integral "extension" 18 of the lever 5 in Crampton and, similarly slipped over the "spindle" 33, 35 of the respondent's structure, after which the two parts of the movable handle and lever, in both cases, are *permanently*, rigidly and integrally in-

separably connected in the manners previously set forth, with the spud mounted on said "extension" or "spindle", which provide rock shafts about the longitudinal axes of which the identical lever and handle permanent structures rock back and forth.

In the Findings of Fact of the trial Court on this issue is one numbered 11, at page 24, continuing to page 25 in the Transcript. Such Finding of Fact, numbered 11, is a fact finding not to be set aside by the Appellate Court unless clearly erroneous (Rule 52 (a)).

THE QUESTIONS PRESENTED

1. When a lower court has found specific exact findings of fact, has conducted the trial proceedings in open court, and heard the witnesses give testimony and observed their demeanor, is the Appellate Court bound not to disturb such fact findings except when they are clearly erroneous; or may it flout and disregard the facts found?

2. Does a Federal Appellate Court rightfully reverse a District Court, under the rules of Civil Procedure established by the Supreme Court of the United States, upon fact questions, where the facts found by the District Trial Court are not erroneous in any respect but are evidently true?

3. Is a District Court of the United States to be reversed by an Appellate Court, where the District Court has decided the case in strict accordance with the applicable decisions of the Supreme Court, and the Appellate Court, in reversing decides such case, not only probably, but inescapably in conflict with the applicable decisions of the Supreme Court of the United States.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The question of infringement in a patent case seldom is anything but a question of fact. The Appellate Court should receive the fact determinations of the Dis-

trict Court which tried the case and heard the witnesses, as settled, unless they are clearly erroneous. This the Sixth Circuit Court of Appeals has not done in this case, but has disregarded Rule 52 (a) of the Civil Rules of Procedure adopted by the Supreme Court of the United States, pursuant to the Act of July 19, 1934, Chapter 651 (48 C. T. A. T. 1064).

2. The Rules of Civil Procedure for the District Courts of the United States have been in effect approximately 7 to 8 years. No previous case is known in which the Supreme Court of the United States has been called upon to interpret Rule 52 (a) of such Rules of Civil Procedure, and in its supervisory authority over the subordinate Federal Judiciary, define the limits of such rule and of how strictly it must be observed by Federal Appellate Courts, in not setting aside facts found by a trial District Court, unless they are clearly erroneous.

3. Fact finding 11 (Transcript page 24, 25) finds complete identity in operation, in mounting, in permanence and simplicity of structure, and in principle of operation, by substantial identity in structure, differing only in colorable departure in details of structure, without change in essential structure. It further finds that the structural development disclosed in patent No. 2,233,159 is appropriated in all essential respects. This fact finding the Sixth Circuit Court of Appeals has set aside, though clearly evident, and not erroneous.

4. The direct identity of the completed movable handle and lever, permanently assembled element of the patent in suit, and of the colorably changed infringing structure, as found by the District Court, is absolute and certain, and is *clearly evident*. The decision of the Circuit Court of Appeals for the Sixth Circuit, setting aside this evident fact found by the District Court is one calling strongly for correction; and for the direction of the Supreme Court of the United States that Rule 52(a) of the Rules of Civil Procedure shall not be thus disregarded but is binding on Circuit Court of Appeals.

5. The decision of the Sixth Circuit Court of Appeals should be reviewed and reversed because it is directly in conflict with the applicable decisions of this court, including:

Sanitary Refrigerator Co. v. Winters et al, etc. 280 U. S. 30; 50 S. Ct. 9;
Burr v. Duryee, 1 Wall. 531; 17 L. Ed. 650;
Union Paper Bag Mach. Co. v. Murphy, 97 U. S. 120; 24 L. Ed. 935;
Elizabeth v. Pavement Co., 97 U. S. 126; 24 L. Ed. 1000;
McCormick v. Talcott, 20 How. 402; 15 L. Ed. 930;
Ives v. Hamilton, 92 U. S. 426; 23 L. Ed. 494; and many others.

6. The decision of the Sixth Circuit Court of Appeals in this case should be reviewed and reversed because there is infringement in the present case, because there is no substantial departure from the patent, but a mere colorable departure in minor detail, therefrom making identity and infringement, *Sanitary Refrigerator Co. v. Winters et al supra.* The principle applies to all patents, even of a restricted scope where any departure is of a merely colorable nature, which the District Court found as a finding of fact. There is no substantial departure; and the two devices (that of the Crampton patent and that of the Respondent) do the same work in substantially the same way and accomplish identically the same results, by identical structure. The infringer takes the whole gist of the invention in this case.

WHEREFOR, your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Court, directed to the United States Court of Appeals for the Sixth Judicial Circuit, commanding said Court to certify and send to this Court, on a date to be designated, a full Transcript of the Record and all proceedings of the Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court, as to the questions herein presented, and

that the judgment of the Court of Appeals for the Sixth Judicial Circuit be reversed insofar as it found no infringement of claims 11, 12 and 13 of the Crampton patent No. 2,233,159, and that the petitioner may be granted such other and further relief as may seem proper.

Respectfully submitted,

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